

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 24571-B

PERMIT 17902-B

LICENSE _____

ORDER TO ADD A POINT OF DIVERSION
CHANGE THE PLACE OF USE,
MODIFY BYPASS FLOW CONDITIONS,
APPROVE A NEW DEVELOPMENT SCHEDULE,
AND AMEND THE PERMIT

WHEREAS:

1. Permit 17902-B was issued to Thomas J. McFadden, Eugene J. M. McFadden and Bernard J. McFadden on May 27, 1980 pursuant to Application 24571-A.
2. Permit 17902-B was subsequently assigned to Eugene J. M. McFadden and Bernard J. McFadden.
3. A petition to add a point of diversion on Powerhouse Canal and change the place of use, and a petition for an extension of time within which to develop the project and apply the water to the proposed use have been filed with the State Water Resources Control Board.
4. A request to modify bypass flow conditions on the Powerhouse Canal has been filed with the State Water Resources Control Board and said State Board has determined that good cause for such a modification has been shown.
5. The Board has determined that the petitioned changes do not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.
6. The permittee has proceeded with diligence and good cause has been shown for the said changes and for the extension of time.
7. Permit Condition 10 pertaining to the continuing authority of the Board should be updated to conform to Section 780(a), Title 23 of the California Code of Regulations.

NOW, THEREFORE, IT IS ORDERED THAT:

1. A point of diversion is added to Condition 2 of this permit as follows:

(3) South 2,400 feet and East 600 feet from NW corner of Section 6, T17N, R11W, MDB&M, being within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 6. Also described as California Coordinate System Zone 2, N 618,400 and E 1,681,100.

(0000002)

2. Condition 3 of the permit be amended to read:

Exchange of the location of irrigated acreage to 173 acres within Sections 1 and 6, T17N, R11 & 12W, MDB&M as follows:

22.1 acres, within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 1, T17N, R12W, MDB&M
34.6 acres, within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 1, T17N, R12W, MDB&M
4.5 acres, within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 6, T17N, R11W, MDB&M
8.2 acres, within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 6, T17N, R11W, MDB&M
23.2 acres, within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 6, T17N, R11W, MDB&M
30.7 acres, within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 6, T17N, R11W, MDB&M
15.4 acres, within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 6, T17N, R11W, MDB&M
34.3 acres, within the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 6, T17N, R11W, MDB&M

173.0 acres total: as shown on map on file with the Board.

(0000004)

3. Condition 7 of the permit be amended to read:

CONSTRUCTION WORK SHALL BE
COMPLETED ON OR BEFORE

December 31, 1993

(0000008)

COMPLETE APPLICATION OF THE
WATER TO THE PROPOSED USE
SHALL BE MADE ON OR BEFORE

December 31, 1995

(0000009)

4. Condition 10 of this permit be amended to read:

Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

5. Condition 14 of the permit regarding the modification of bypass flow conditions on Powerhouse Canal be amended as follows:

For the protection of fish and wildlife, permittee shall bypass, as a minimum, the following flows or the total stream flow, whichever is less:

(a) From May 15 through September 15, bypass 75 cubic feet per second in a normal water year; 40 cubic feet per second in a dry water year and 20 cubic feet per second in a critical water year.

(b) From September 16 through May 14, bypass 35 cubic feet per second in normal water year, 35 cubic feet per second in a dry water year and 20 cubic feet per second in a critical water year.

For the purposes of this term, the follow definitions shall apply:

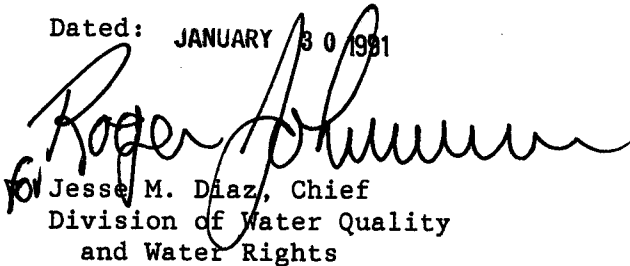
- (1) Dry water year conditions are defined to exist when the actual cumulative inflow to Lake Pillsbury for the water year (beginning October 1 of each calendar year) is less than or equal to:

8,800 acre-feet as of January 1
39,200 acre-feet as of February 1
65,700 acre-feet as of March 1
114,500 acre-feet as of April 1
145,600 acre-feet as of May 1
160,000 acre-feet as of June 1

- (2) Critical water year conditions are divined to exist when the actual cumulative inflow to Lake Pillsbury for the water year is less than or equal to:
- 4,000 acre-feet as of January 1
 - 19,500 acre-feet as of February 1
 - 40,000 acre-feet as of March 1
 - 45,000 acre-feet as of April 1
 - 50,000 acre-feet as of May 1
 - 55,000 acre-feet as of June 1
- (3) Normal water year conditions exist in the absence of defined dry or critical water year conditions.
- (4) The water year condition designation for the months of July through December shall be the same as the designation for the previous June. Water year conditions for January through June shall be redetermined monthly.
- (5) Cumulative inflow to Lake Pillsbury is the calculated algebraic sum of releases from Lake Pillsbury, increases in storage in Lake Pillsbury, and evaporation from Lake Pillsbury. (0140060)
6. The following term requiring the annual reporting of pumping operations at points of diversion (1), (2) and (3) shall be added as Condition 21 in Permit 17902B.

Permittee shall maintain records of diversion at each of the specified points of diversion. Such records shall be submitted each year with Annual Progress Reports. (0100300)

Dated: JANUARY 30 1981


for Jesse M. Diaz, Chief
Division of Water Quality
and Water Rights

STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 17902B

Application 24571B of Thomas J. McFadden, Eugene J. M. McFadden, and
Bernard McFadden
P.O. Box 193, Potter Valley, California 95469

filed on March 5, 1974, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Powerhouse Canal

Tributary to:

East Fork Russian River thence

Russian River

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Town- ship	Range	Base and Meridian
1. S1885 ft and E830 ft from NW Corner of Section 6	SW 1/4 of NW 1/4	6	17N	11W	MD
2. S3345 ft and E665 ft from NW Corner of Section 6	NW 1/4 of SW 1/4	6	17N	11W	MD

County of Mendocino

3. Purpose of use:	4. Place of use:	Section	Town- ship	Range	Base and Meridian	Acres
Frost Protection	SE 1/4 of NE 1/4	1	17N	12W	MD	35
	NE 1/4 of NE 1/4	1	17N	12W	MD	19
	SE 1/4 of NW 1/4	6	17N	11W	MD	30
	SW 1/4 of NW 1/4	6	17N	11W	MD	24
	NW 1/4 of NW 1/4	6	17N	11W	MD	9
	NE 1/4 of SW 1/4	6	17N	11W	MD	20
	NW 1/4 of SW 1/4	6	17N	11W	MD	36
					TOTAL	173

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 6 cubic feet per second to be diverted from March 15 to May 15 of each year. The maximum amount diverted under this permit shall not exceed 173 acre-feet per year. (0000005)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)

7. Complete application of the water to the proposed use shall be made on or before December 1, 1990. (0000009)

8. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued. (0000010)

9. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)

10. Pursuant to California Water Code Sections 100 and 275, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation. (0000012)

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

12. The State Water Resources Control Board reserves jurisdiction over this permit to impose any appropriate conditions at some future date to conform the permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing. (0000020)

13. To the extent that water available for use under this permit is return flow, imported water, or wastewater, this permit shall not be construed as giving any assurance that such supply will continue. (0000025)

14. For the protection of fish and wildlife, permittee shall during the period: (a) from March 15 through May 14 bypass a minimum of 35 cubic feet per second. (b) on May 15 bypass a minimum of 75 cubic feet per second. The total streamflow shall be bypassed whenever it is less than the designated amount for that period. The above requirements are a result of interim recommendations by the Department of Fish and Game, and they shall not be construed as a finding by the State Water Resources Control Board that the amount of water named therein is either adequate or required for the maintenance of fish and wildlife. (0140060)

15. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flows required by the conditions of this permit. Said measuring device shall be properly maintained. (0060062)

16. In accordance with Section 1603 and/or Section 6100 of the Fish and Game Code, no water shall be diverted under this permit until the Department of Fish and Game has determined that measures necessary to protect fishlife have been incorporated into the plans and construction of such diversion. The construction, operation, or maintenance costs of any facility required pursuant to this provision shall be borne by the permittee. (0000063)

17. The State Water Resources Control Board will maintain jurisdiction over this permit until results of the cooperative Federal-State, Russian-Eel River flow augmentation study are made known and until the Federal Power Commission has made a determination on the relicensing of Pacific Gas and Electric Company's transbasin power generation project. (0000600)

18. Water diverted under this permit will be restricted to that released by upstream appropriators in Potter Valley and does not constitute an additional appropriation of Eel River water. (0000900)

19. The total quantity of water diverted under this permit, together with that diverted under licensed Applications 13529 and 23629 and permits issued pursuant to Applications 24209 and 24571A shall not exceed 436 acre-feet per year. (0000114)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: MAY 27 1980

STATE WATER RESOURCES CONTROL BOARD

L. C. Spencer, for
Chief, Division of Water Rights